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22850 7590 12/04/2009
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

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| EXAMINER |
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SHAW, PELING ANDY

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| ART UNIT | PAPER NUMBER |
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2444

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES H. STEPHENS JR.

Application No. 10/045,303
Technology Center 2400

Mailed: December 3, 2009

Before DELORES LOWE, *Review Team Paralegal*
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 23, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

PRIOR RETURN ORDER

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on September 18, 2009 wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made or have not been made in entirety. The matters still requiring attention are identified below.

EXAMINER’S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner’s Answer mailed March 5, 2009 under the heading “Grounds of rejection” is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

A review of the Examiner’s Answer finds a new Ground(s) of Rejection that has not been provided the required heading “New Grounds of Rejection” and/or which does not include the approval of the TC Director or his/her designee.

Specifically, the Examiner's Answer sets forth a rejection of claims 3, 7-10, 15 and 17-19 are omitted from the Grounds of Rejection; whereas the last Office action, including any mailed Advisory Action(s) finds that claims 3, 7-10, 15 and 17-19 are rejected under 35 U.S.C. 103(a) as unpatentable over Natarajan, Weisman and in further view of Evans. Correction of all Grounds of rejection for all claims is required.

CONCLUSION

Accordingly, it is ORDERED that the application be returned to the Examiner:

- 1) to vacate the Examiner's Answer mailed March 5, 2009;
- 2) to generate a new Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;
- 3) and to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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